

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,
HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W. CLAYTON BURCH
in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,**

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S
MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE REGIONAL
PRINCIPALS' MEETING POWERPOINT AND RECORDED PRESENTATION**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and moves the Court, *in limine*, for an Order to exclude the video presentation and accompanying PowerPoint produced by WVSSAC. Based on Federal Rule of Evidence 401, 402, 403, 801, and 802, WVSSAC moves this Court for entry of an Order, excluding the PowerPoint and the accompanying video presentation produced in discovery as neither is relevant to the issues being tried in this case, indeed, neither has been substantively discovered in this case, such that

any use of them at trial would be speculative, and the resulting prejudice from their admission would outweigh any probative value they may have.

WVSSAC seeks to exclude the PowerPoint produced at Bates Numbers WVSSAC000009 and 000287-000364, as well as the accompanying video identified by Bates Number 000365. The PowerPoint and recorded video presentation depict a Regional Principal's Meeting. Specifically, the presentation, which was held via Zoom and recorded, along with the PowerPoint, includes statements made by attendees and a discussion of legal updates across the State.. On the video recording, an unidentified attendee can be heard briefly discussing litigation. No discovery has considered the identity of the speaker or the impact of the PowerPoints on this litigation or HB 3293. For these reasons, both of these 'documents' are irrelevant as they offer no probative value, and the statements heard on video constitute inadmissible hearsay to the extent that any party would attempt to use the statements of the unknown speaker for a substantive purpose herein.

The PowerPoint and recorded video presentation should be precluded from use at trial as both the PowerPoint and the video presentation have not been substantively discovered, are irrelevant, and have not been shown to impact facts at issue here. *See* F. R. Evid. 401, 402. A discussion among those attending the training regarding legal updates, including a brief discussion of Title IX and gender identity in sports, makes no fact at issue in this case more or less likely to be true. Instead, the recorded presentation and the PowerPoint risk unfair prejudice to WVSSAC, confusing the issues, misleading the jury, introducing undue delay, and wasting time. Further, to the extent any statements on the recorded presentation are offered by those other than Bernie Dolan, they are inadmissible as against WVSSAC absent discovery not conducted here, constitute hearsay, and no exception to the hearsay rule allows for their admission. *See* F. R. Evid. 801, 802.

Plaintiff and other parties may seek to rely upon the PowerPoint presentation and/or recorded presentation unfairly, such as to imply that WVSSAC was more than generally aware of H.B. 3293. However, no such evidence has been adduced, such that any discussion of same at trial would be speculative at best. Further, under the balancing test provided by Rule 403 of the Federal Rules of Evidence, however, the PowerPoint and recording should be excluded as the prejudicial nature outweighs any probative value they could offer, especially given the lack of evidence relative to the events contained in or occurring during the presentations.

For all of the reasons set forth herein, WVSSAC moves this Honorable Court for an order *in limine*, precluding Plaintiff from offering into evidence the PowerPoint or recording of the WVSSAC Regional Principal's Meeting.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

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CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 22nd day of June, 2022, served a true and exact copy of the foregoing **“West Virginia Secondary School Activities Commission’s Memorandum in Support of Motion in Limine to Exclude Regional Principals’ Meeting PowerPoint And Recorded Presentation”** with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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